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PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Brooks et al.

Attorney Docket No.: JTR001-01

Application No.: 09/758,865

Filed: January 11, 2001

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)  
) For: DISPLAY DEVICE AND  
) METHOD THEREFOR  
)  
)

) Group Art Unit: 3611

APPELLANT'S BRIEF

Hon. Commissioner of Patents  
and Trademarks  
Washington, D.C. 20231

Attention: Examiner Cassandra Hope Davis

Commissioner:

I hereby certify that this correspondence  
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Sandra L. Godsey

(Signature)

April 28, 2006

(Date of Signature)

### **REAL PARTY IN INTEREST**

The real party in interest is Exhaust Etiquette Inc., assignee of the present application.

### **RELATED APPEALS AND INTERFERENCES**

There are no related appeals and interferences.

### **STATUS OF CLAIMS**

Claims 1-10 are pending in this Application.

Claims 1, 2, and 4-9 stand rejected under 35 U.S.C. §102(b) as being anticipated by Squires, US Patent Number 1,730,79, hereinafter referred to as "Squires" or "the Squires Patent."

Claims 1-3, 6 and 8 stand rejected under 35 U.S.C. §102(b) as being anticipated by Connolly, U.S. Patent No. 1,440,061, hereinafter referred to as "Connolly" or "the Connolly Patent."

Claims 1, 2, 6, and 8-10 stand rejected under 35 U.S.C. §102(b) as being anticipated by Binner, U.S. Patent No. 4,349,246, hereinafter referred to as "Binner" or "the Binner Patent."

Appellants presented amendments after final to claims 1-10 on January 21, 2005, which were entered by the Examiner as not affecting scope of the claims.

Appellants appeal the rejections of claims 1-10 as stated above.

### **STATUS OF AMENDMENTS**

Appellants present herewith amendments to the claims.

### SUMMARY OF CLAIMED SUBJECT MATTER

As illustrated in FIG. 1, and detailed in the specification, a display device 12 is attached to vehicle 5 and is positioned around tailpipe 10. Display device 12 includes a display article 18, which allows display of information, insignia, college name, logo, etc. The display article 18 does not interfere with view of the license plate 7 and does not obstruct the view from any windows in the vehicle 5, such as through window 8. The display device 12 of Fig. 1 is further illustrated in Fig. 2, including display article 18.

Claim 1 defines a tailpipe display apparatus for a vehicle, having an attachment piece and a receiver piece. The receiver piece couples a display piece to the tailpipe display apparatus such that the display piece is visible from behind the vehicle.

1. A tailpipe display apparatus, comprising:

a tailpipe attachment piece, adapted for coupling an exhaust pipe of a vehicle;

and

a receiver piece coupled to the tailpipe attachment piece, wherein the receiver piece is adapted for coupling to a display piece such that the display piece hangs below the exhaust pipe and approximately perpendicular to the length of the exhaust pipe providing exposure to the display piece from behind the vehicle. *Emphasis added.*

Similarly, claim 6 defines a tailpipe display piece for a vehicle having a coupling piece and a display portion. The display portion couples a display piece to the tailpipe display piece such that the display piece is visible from behind the vehicle.

Claim 8 defines a tailpipe display piece for a vehicle having a coupling means and a display means. The display means couples a display piece to the tailpipe display piece such that the display piece is visible from behind the vehicle.

## GROUND OF REJECTION TO BE REVIEWED ON APPEAL

- I. Claims 1, 2, and 4-9 stand rejected under 35 U.S.C. §102(b) as being anticipated by Squires, US Patent Number 1,730,79, hereinafter referred to as "Squires" or "the Squires Patent."
- II. Claims 1-3, 6 and 8 stand rejected under 35 U.S.C. §102(b) as being anticipated by Connolly, U.S. Patent No. 1,440,061, hereinafter referred to as "Connolly" or "the Connolly Patent."
- III. Claims 1, 2, 6, and 8-10 stand rejected under 35 U.S.C. §102(b) as being anticipated by Binner, U.S. Patent No. 4,349,246, hereinafter referred to as "Binner" or "the Binner Patent."

## ARGUMENT

The claims of the present invention are patentably distinguishable over the prior art of record. Specifically, the claims are directed to a display device for a tailpipe of a vehicle, particularly, a display device designed for attachment to an exhaust pipe to allow visibility from behind the vehicle. None of the prior art references teaches such a device. None of the prior art references anticipated such a display device. Specifically, claim 1 of the present application as currently amended recites:

1. A tailpipe display apparatus, comprising:
  - a tailpipe attachment piece, adapted for coupling an exhaust pipe of a vehicle;
  - and
  - a receiver piece coupled to the tailpipe attachment piece, wherein the receiver piece is adapted for coupling to a display piece such that the display piece hangs below the exhaust pipe and approximately perpendicular to the

length of the exhaust pipe providing exposure to the display piece from behind the vehicle. *Emphasis added.*

For a prior art reference to anticipate a claim such reference must include each and every element of the claim. Specifically, with respect to claim 1, such reference must include a tailpipe attachment piece and a receiver piece as recited.

The prior art references of record do not teach or even suggest a device for displaying an item from an exhaust pipe of a vehicle. The prior art references do not teach a tailpipe attachment piece, or a receiver piece coupled to the tailpipe attachment piece adapted for coupling to a display piece such that the display piece hangs as recited providing exposure to the display piece from behind the vehicle.

The Examiner argues the prior art references teach all of the structure recited in Appellants' claims. Appellants respectfully disagree, as none of the references of record teach a "tailpipe attachment piece." As detailed below, Squire teaches a steering post map holder device, Connolly teaches a steering post automobile license card holder device and Binner teaches an eyeglass rear view mirror attachment device. None of these references teach a tailpipe attachment piece.

The Examiner then argues the structure of these references can perform the claimed functional limitations. While this argument is specifically rebutted hereinbelow, the MPEP specifically disallows this ground for rejection. See MPEP §2114, A PRIOR ART DEVICE CAN PERFORM ALL THE FUNCTIONS OF THE APPARATUS CLAIM AND STILL NOT ANTICIPATE THE CLAIM

Even if the prior art device performs all the functions recited in the claim, the prior art cannot anticipate the claim if there is any structural difference...

Appellants' claims recite structure and functions not taught or suggested by the prior art references. The prior art references all provide visibility to a driver or user. There is no teaching or suggestion of a tailpipe display device providing visibility from behind an exhaust pipe. There is no teaching of a tailpipe attachment piece.

### I. Squires

Squires merely teaches a map holder for the steering post of a vehicle. Squire teaches a device providing convenience to the driver of the vehicle. The map holder device is not visible from behind the vehicle. In fact, applying the map holder to the exhaust pipe would frustrate the teaching of Squires, and teaches away from Appellants' claimed invention, as Squires seeks to facilitate visibility to the driver. Therefore, Squires does not anticipate a display apparatus for the exhaust pipe, and specifically does not teach an apparatus providing a display piece hanging below the exhaust pipe and approximately perpendicular to the length of the exhaust pipe.

### II. Connolly

Connolly merely teaches an automobile license card holder for the steering post of an automobile. Similar to Squire, Connolly teaches a device providing convenience to the driver of the vehicle. The automobile license card holder device is not visible from behind the vehicle. In fact, applying the automobile license card holder to the exhaust pipe would frustrate the teaching of Connolly, and teaches away from Appellants' claimed invention, as Connolly seeks to facilitate visibility to the driver. Therefore, Connolly does not anticipate a display apparatus for the exhaust pipe, and specifically does not teach an apparatus providing a display piece hanging below the exhaust pipe and approximately perpendicular to the length of the exhaust pipe.

### III. Binner

Binner teaches a rear view mirror attachable to eyeglasses, hat, helmet, etc. providing visibility to the wearer. Binner does not teach a tailpipe attachment piece. Therefore, Binner does not anticipate a display device for the exhaust pipe, and specifically does not teach a display apparatus for the exhaust pipe, and specifically does not teach an apparatus providing a display piece hanging below the exhaust pipe and approximately perpendicular to the length of the exhaust pipe.

Appellants respectfully submit the Examiner has inappropriately rejected the pending claims on prior art references that do not support a 35 U.S.C. §102(b) rejection. Appellants further respectfully submit the present Application and the claims appealed are patentable over the prior art of record.

Respectfully submitted,

Dated:

April 28, 2006

By:

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## **CLAIMS APPENDIX**

### **CLAIMS AS PENDING**

- 1(Previously Amended). A tailpipe display apparatus, comprising:  
a tailpipe attachment piece, adapted for coupling to an exhaust pipe of a vehicle; and  
a receiver piece coupled to the tailpipe attachment piece, wherein the receiver piece is adapted for coupling to a display piece such that the display piece hangs below the exhaust pipe and approximately perpendicular to the length of the exhaust pipe providing exposure to the display piece from behind the vehicle.
- 2(Previously Amended). The tailpipe display apparatus as in claim 1, further comprising a coupling means, the coupling means adapted for coupling the receiver piece to the tailpipe attachment piece.
- 3(Previously Amended). The tailpipe display apparatus as in claim 1, wherein the tailpipe attachment piece and the receiver piece are formed as a single element.
- 4(Previously Amended). The tailpipe display apparatus as in claim 1, wherein the tailpipe attachment piece is adjustable to accommodate multiple size exhaust pipes.
- 5(Previously Amended). The tailpipe display apparatus as in claim 1, wherein the display piece has a first freedom of motion in a first rotational direction, and a second freedom of movement in an opposite rotational direction, and wherein the first and second freedom of motion are not equal.
- 6(Previously Amended). A tailpipe display piece comprising:  
a display portion for displaying information; and  
a coupling piece coupled to the display portion and adapted for coupling to an exhaust pipe of a vehicle such that the display piece hangs approximately

perpendicular to the length of the exhaust pipe providing exposure to the display piece from behind the vehicle.

7(Previously Amended). A tailpipe display piece as in claim 6, wherein the display portion includes at least one lighting device.

8(Previously Amended). A tailpipe display piece comprising:  
a display means for displaying information; and  
a coupling means coupled to the display means and adapted for coupling to an exhaust pipe of a vehicle such that the display means hangs approximately perpendicular to the length of the exhaust pipe providing exposure to the display means from behind the vehicle.

9(Previously Amended). The tailpipe display piece as in claim 8, wherein the coupling means is operative for multi-positional control of the display portion.

10(Previously Amended). The tailpipe display piece as in claim 9, wherein the coupling means is operative as a ball and socket connector.

## **EVIDENCE APPENDIX**

No evidence has been presented pursuant to 37 C.F.R. §§1.130, 1.131, or 1.132 in the present application for patent.

## **RELATED PROCEEDINGS APPENDIX**

There are no related proceedings or decisions rendered by a court or the Board in any proceeding.